

REMARKS

Claims 1-29 are now pending in the present application. Claims 4, 6-8, 11-16, 19, 20 and 25 have been amended and claims 28 and 29 have been added. Claims 1-4, 7, 11, 14, 15, 16 and 19 are independent. Reconsideration of this application, as amended, is respectfully requested.

Rejection Under 35 U.S.C. § 112

Claims 19-21, 25 and 26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed.

As the Examiner will note, claims 19, 20 and 25 have been amended to address the Examiner's rejection. Specifically, claim 19 has been amended to include antecedent basis for the recitation "said valve body" and claims 20 and 25 have been amended to delete the recitation mentioned by the Examiner.

In view of the above amendments and remarks, Applicant respectfully submits that claims 19-21, 25 and 26 are definite and

clear. Accordingly, reconsideration and withdrawal of the Examiner's rejection under 35 USC § 112, second paragraph are respectfully requested.

Rejections Under 35 U.S.C. §§ 102 and 103

Claim 14 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Talbot et al., USPN 2,012,836. Claim 14 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Ritcher, USPN 4,594,904. Claims 15 and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Vogel-Jorgensen, USPN 1,969,081. Claims 15 and 17 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Shaw, USPN 2,314,167. Claims 4-9 and 11-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over any of Terkel, USPN 2,197,352 in view of Meyer, USPN 4,669,321. Claims 4-13 and 20-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Talbot et al., USPN 2,012,836 in view of Meyer, USPN 4,669,321. These rejections are respectfully traversed.

With regard to the Examiner's rejection of claim 14 in view of the Talbot et al. reference, as the Examiner will note, claim 14 has been amended to recite "said longitudinal axis of said valve

body being generally parallel to and offset from said longitudinal axis of said orifice." Applicant respectfully submits that claim 14 now defines over the Talbot et al. reference relied on by the Examiner.

Referring to Talbot et al., it is believed that the Examiner considers the longitudinal axis of the valve body 7 to be a vertical axis and therefore the longitudinal axis of the valve body is "offset" from the longitudinal axis of the orifice. Since claim 14 now requires that the longitudinal axis of the valve body be "generally parallel to" the longitudinal axis of the orifice, Applicant submits that the Talbot et al. reference fails to anticipate independent claim 14 of the present invention.

With regard to the Examiner's rejection of claim 14 in view of the Richter reference, this reference also fails to disclose a longitudinal axis of the valve body 17 being both offset from the longitudinal axis of the orifice and generally parallel to the axis of the orifice as recited in amended independent claim 14 of the present invention. Accordingly, Richter also fails to anticipate independent claim 14 of the present invention.

In addition, Applicant submits that Richter fails to disclose the recitation "a bottom of said internal cavity continuously declining from at or adjacent to a lower margin of said orifice to at least an exit of said valve body" as recited in independent claim 14. Referring to Fig. 1 of Richter, the bottom of the internal cavity would be the upper horizontal surface of the valve housing portion 17. Since this horizontal surface is not "at or adjacent to a lower margin of said orifice" and since this surface does not continuously decline, Applicant respectfully submits that this recitation in independent claim 14 is also absent from the Richter reference. It appears that the Examiner considers the vertical surface of the interior wall 49 to be the continuously declining bottom of the internal cavity. However, since this is a side of the internal cavity and not a bottom of the internal cavity, Applicant submits that this surface cannot be considered the bottom of the internal cavity as recited in independent claim 14. Accordingly, Richter fails to anticipate independent claim 14 for this additional reason.

With regard to the Examiner's rejection of claims 15 and 17 in view of the Vogel-Jorgensen and Shaw references, as the Examiner

will note, claim 15 has been amended to recite "a movable sealing tip engageable with said orifice for opening and closing said orifice." In Vogel-Jorgensen, the orifice is located at the bottom of the sample cavity, which is identified by the Examiner by reference characters e and f. Since there is no movable sealing tip at this location, Applicant respectfully submits that Vogel-Jorgensen fails to anticipate independent claim 15 of the present invention.

With regard to the Shaw reference, referring to Fig. 5 of this reference, the orifice located at the bottom of the opening 15 also fails to include a movable sealing tip engageable therewith. Accordingly, the Shaw reference also fails to anticipate independent claim 15 of the present invention.

With regard to the Examiner's rejection of claims 4-9 and 11-13 in view of the Terkel and Meyer references, Applicant respectfully submits that the Examiner's modification of the Terkel reference would not have been obvious to one having ordinary skill in the art. Referring to the Terkel reference, the Examiner considers the axis of the lateral spout 23 to be the internal drainage path with an angle of declination in a direction away from

the vessel or conduit. The Examiner recognizes that Terkel fails to disclose an inclined ferrule; however, the Examiner relies on the Meyer reference in order to modify Terkel to arrive at the presently claimed invention. Referring to page 6 of the Examiner's Office Action, the Examiner states "[i]t would have been obvious to one of ordinary skill in the art to compensate for the angle of inclination of the ferrule while still maintaining the required declination of the drainage path in the sampling valve of the primary reference." (emphasis added). Applicant respectfully submits that one having ordinary skill in the art would not in fact modify the Terkel reference as proposed by the Examiner. Although Terkel et al., if mounted in an inclined ferrule would include an internal drainage path with an angle of declination in a direction away from the vessel or conduit greater than or equal to an angle of inclination of an axis of an internal bore of the ferrule, Applicant does not agree with the Examiner that one having ordinary skill in the art would mount the Terkel valve in an inclined ferrule as asserted by the Examiner.

Referring to Fig. 1 of Terkel, if the valve of Terkel were mounted in an inclined ferrule, the surface directly below the

reference numeral 11 in Terkel would incline in a direction away from the vessel or conduit. In view of this, when the valve is in the closed position, material would pool between the sealing tip 17 of the valve and the opening of the entrance to the spout 23. The Examiner states that one having ordinary skill in the art would compensate for such angle of inclination; however, Applicant submits that there is no such teaching in the Terkel or Meyer references and therefore the Examiner has failed to establish a *prima facie* case of obviousness. In order for the Examiner to establish a *prima facie* case of obviousness, the Examiner must provide some teaching or suggestion in the prior art in order to modify a reference or combination of references to arrive at the presently claimed invention. Since the Examiner has not shown any suggestion in the prior art to "compensate" for the angle of the inclination of the ferrule, Applicant submits that the Examiner's rejection is improper and should be withdrawn.

In addition to the above, it is also noted that material would also pool between the left edge of the valve seat 13 and the left edge of the surface which is below the reference numeral 11 in Terkel. In view of this, even if there were such a teaching to

decline the surface which is below the reference numeral 11 in Terkel in order to make up for the angle of inclination of the ferrule, a fact which an Applicant is not in agreement with, there is certainly no teaching to make up for or "compensate" for the angle of inclination of the ferrule for the material which would accumulate on top of the valve seat 13. Referring to Fig. 1 of Terkel, it can be clearly seen that the upper surface of the valve seat 13 is located at a lower elevation than the surface which is directly below the reference numeral 11 of Terkel. If the Terkel valve were mounted in an inclined ferrule as suggested by the Examiner, it would not only be necessary to "compensate" for the inclination of the ferrule by modifying the surface which is below the reference numeral 11 in Terkel, but it would also be necessary to modify the valve seat at the location where the valve seat is connected to the valve body in order to accomplish free drainage of the valve. Since there is no suggestion in the prior art to modify Terkel to compensate for the angle of inclination of the ferrule, Applicant submits that the Examiner's rejection in view of the Terkel and Meyer references is improper and should be withdrawn.

In other words, Terkel may disclose a declining spout 23; however, there is no suggestion in either Terkel or Meyer to modify the combination to decline the valve seat 13 or the surface of the valve body below the reference numeral 11 of Terkel to compensate for drainage. Accordingly, independent claims 4, 7 and 11 are non-obvious over the references relied on by the Examiner.

With regard to the Examiner's rejection of claims 4-13 and 20-27 in view of the Talbot et al. and Meyer references, Applicant also submits that the Examiner's rejection is improper and should be withdrawn. As the Examiner will note, independent claims 4, 7 and 11 have been amended to recite that a valve operating rod includes an axis which is at an angle to an axis of the internal drainage path as recited in independent claims 4 and 11 or at an angle to an axis of the drainage trough as recited in independent claim 7. Referring to Talbot et al., the valve operating rod 16 is clearly parallel to the internal drainage path or drainage trough of Talbot et al. Accordingly, the combination of Talbot et al. and Meyer fails to teach or suggest each element of independent claims 4, 7 and 11. Therefore, the Examiner's rejection in view of the

combination of Talbot et al. and Meyer is improper and should be withdrawn.

With regard to dependent claims 5, 6, 8-10, 12, 13, 17 and 20-27, Applicant respectfully submits that these claims are allowable due to their respective dependence upon independent claims 4, 7, 11 and 15, as well as due to the additional recitations in these claims.

In view of the above amendments and remarks, Applicant respectfully submits that claims 4-15, 17 and 19-27 clearly define the present invention over the references relied on by the Examiner. Accordingly, reconsideration and withdrawal of the Examiner's rejections under 35 U.S.C. §§ 102 and 103 are respectfully requested.

Double Patenting

Claims 3-9 and 11-13 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4 and 5 of U.S. Patent No. 6,133,022 in view of Meyer, U.S. Patent No. 4,669,321. Since the Examiner's rejection is an obviousness-type rejection, Applicant has prepared

a Terminal Disclaimer in order to overcome the Examiner's double patenting rejection. The Terminal Disclaimer and the corresponding fee of \$55.00 is attached hereto for the Examiner's consideration.

In view of the Terminal Disclaimer, Applicant respectfully submits that the Examiner's obviousness-type double patenting rejection of claims 3-9 and 11-13 has been overcome. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Allowable Subject Matter

Claims 1-3 have been allowed by the Examiner and claims 16, 18 and 19 have been indicated by the Examiner as including allowable subject matter. Applicant greatly appreciates the indication of allowable subject matter by the Examiner.

Since claims 1-3 have not been amended, it is believed that these claims are still in condition for allowance. With regard to claim 16, this claim has been amended to include the subject matter of previously presented claim 15 and therefore this claim is also believed to be in condition for allowance.

With regard to claim 19, this claim has also been amended to include the subject matter of previously presented claim 15, and to overcome the Examiner's rejection under 35 U.S.C. § 112, second paragraph. Accordingly, claim 19 should also be in condition for allowance.

Additional Claims

Additional claims 28 and 29 have been added for the Examiner's consideration. Applicant respectfully submits that these claims are allowable due to their dependence upon allowable independent claims 4 and 11, as well as due to the additional recitations in these claims.

Favorable consideration and allowance of additional claims 28 and 29 are respectfully requested.

CONCLUSION

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently pending rejections and that they be withdrawn.


It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

Pursuant to the provisions of 37 C.F.R. §§ 1.17 and 1.136(a), the Applicant respectfully petitions for a three (3) month extension of time for filing a response in connection with the present application and the required fee of \$475.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
Paul C. Lewis, #43,368

PCL/cl
2153-0110P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000